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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,630	07/07/2003	Robert Lawrence Fair	EMCCOR P08AUSD1	7822

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EXAMINER
MASKULINSKI, MICHAEL C

ART UNIT	PAPER NUMBER
2113	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Office Action Summary	10/614,630	FAIR, ROBERT LAWRENCE
	Examiner	Art Unit	
	Michael C. Maskulinski	2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 July 2003</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1 and 2</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1 and 2</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>07 July 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

Final Office Action

Double Patenting

1.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.   A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2.   Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,718,481 B1.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claim(s) 1 of U.S. Patent No. 6,718,481 B1 contain(s) every element of claim(s) 1 of the instant application and as such anticipate(s) claim(s) 1 of the instant application.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by,** the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting

because the claims at issue were obvious over claims in four prior art patents); In re

Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of

obviousness-type double patenting where a patent application claim to a genus is

anticipated by a patent claim to a species within that genus). " ELI LILLY AND

COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the

Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30,

2001).

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4.   Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by

Lewis, U.S. Patent 5,768,501.

Referring to claim 1:

a.·   In column 6, lines 8-25, Lewis discloses a topographical view of a network

that shows the lowest level, e.g. cables and higher levels, e.g. networks, LANs,

rooms (a plurality of domains structured as an integrated, cooperative cluster of

domains including hierarchically related domains). Further, in column 1, lines 47-

48, Lewis discloses a domain type that is a grouping based upon functional

characteristics of network resources (and peer related domains). In column 1,

lines 35-65, Lewis discloses each domain performing one or more functions supporting the services provided by the system resource.

b.   In column 5, lines 53-57, Lewis discloses a topological display of the network that shows hierarchical relationships between network devices hierarchically related domains include a higher level domain and a lower level domain respectively performing higher and lower level operations of one or more related functions supporting the services provided by the system resource.

c.   In column 1, lines 47-48, Lewis discloses a domain type that is a grouping based upon functional characteristics of network resources (peer related domains include parallel domains performing related operations in mutual support of one or more related functions supporting the services provided by the system resource)

d.   In column 8, lines 12-19, Lewis discloses inter-domain monitoring and alarms and an example of an inter-domain alarm as a notification that a router in domain A may be faulty or degraded, and thus may affect the throughput or other performance characteristics of domain B. An example of a command is a command to re-route data from domain A intended for domain B through a different router than the faulty or degraded router (a domain having a peer related domain monitors the peer related domain and assumes the operations performed by the peer domain upon detecting a failure in the peer related domain).

Referring to claim 2, in column 1, lines 47-48, Lewis discloses a domain type that is a grouping based upon functional characteristics of network resources (peer related domains performing related operations in mutual support of one or more related functions supporting the services provided by the system resource).

Response to Arguments

5.   Applicant's arguments filed August 1, 2003 have been fully considered but they are not persuasive.

6.   On page 5, under the section REMARKS, the Applicant argues, "the Lewis '501 system is not comprised of hierarchical and peer domains but in fact only a single layer of domains, designated as Domains 10." The Examiner respectfully disagrees. In column 6, lines 8-25, Lewis discloses a topographical view of a network that shows the lowest level, e.g. cables and higher levels, e.g. networks, LANs, rooms (a plurality of domains structured as an integrated, cooperative cluster of domains including hierarchically related domains). Further, in column 1, lines 47-48, Lewis discloses a domain type that is a grouping based upon functional characteristics of network resources (and peer related domains). In column 1, lines 35-65, Lewis discloses each domain performing one or more functions supporting the services provided by the system resource.

7.   On pages 6-7, under the section REMARKS, the Applicant argues, "the Lewis '501 system is still further fundamentally distinguished from the present invention in that the Lewis '501 system is not comprised of hierarchical and peer domains." The Applicant then goes on to describe the passing of alarm signals up and down a

hierarchy to show that at most Lewis discloses only hierarchical domains. The

Examiner respectfully disagrees with the Applicant's interpretation of the system of

Lewis. The Examiner would appreciate it if the Applicant would provide where,

specifically, the citations relied upon are taught in Lewis. Further, the Applicant's

arguments are only concerned about the hierarchical handling and correlation of alarms.

This has nothing to do with whether or not peer related and hierarchical domains exist in

the system of Lewis. The claims only mention having peer related and hierarchical

domains and not how alarms are handled. As shown above, Lewis discloses peer

related and hierarchical domains and how alarms are handled is irrelevant to this.

8. On page 7, under the section REMARKS, the Applicant argues, "It is therefore

clear that all relationships between elements in the Lewis '501 system are solely

hierarchical, that is, communications and operations pass only between superior and

subordinate elements, and there are no communications or interoperations between

peer elements, and no peer elements within the definition of peer element as recited in

claim 1." The Examiner respectfully disagrees. The Examiner cannot find where in the

claim language it is stated that there are communications or interoperations between

peer elements. In fact all that is claimed is that the peer related domains are parallel

which would mean that there are never any interaction between them. However, for

sake of argument the Examiner directs the Applicant to column 1, lines 47-48 of Lewis.

9. On pages, 7-8, under the section REMARKS, the Applicant argues, "the

elements on a comparable functional level, such as 'domains' 10, operate

independently and separately from one another rather than cooperatively or in mutual

support of one another." The Examiner disagrees for at least the reasons and the rejection above.

10.   On page 8, under the section REMARKS, the Applicant argues, "none of the elements in the Lewis '501 system, and in particular none of the elements on a common functional level, such as 'domains' 10, 'monitors the peer related domain and assumes the operations performed by the peer domain upon detecting a failure in the peer related domain.'" The Applicant then goes on to argue that alarm conditions are passed upward to the next hierarchically superior domain. The Examiner would like to point out that passing of alarm conditions upward has no relevance to monitoring peer related domains and assuming the operations performed by the peer domain upon detecting a failure in the peer related domain. Further, in column 8, lines 12-19, Lewis discloses inter-domain monitoring and alarms and an example of an inter-domain alarm as a notification that a router in domain A may be faulty or degraded, and thus may affect the throughput or other performance characteristics of domain B. An example of a command is a command to re-route data from domain A intended for domain B through a different router than the faulty or degraded router.

Conclusion

11.   This is a divisional of applicant's earlier Application No. 09/580,187. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL**

even though it is a first action in this case. See MPEP § 706.07(b). Applicant is

reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no, however, event will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Michael C. Maskulinski whose telephone number is 571-

272-3649. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the
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USPTO Customer Service Representative or access to the automated information
system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael C Maskulinski
Examiner
Art Unit 2113